

CONVOCATION ADDRESS

THE HONOURABLE PATRICK KERWIN

Chief Justice of Canada

The occasion is memorable, not merely for this graceful gesture on the part of this University [referring to the honorary degrees conferred] which is a reason personal to ourselves, but because, due to the generosity of your honorary Chancellor, Lord Beaverbrook, and by him, there has been this day dedicated to the service of the legal profession, and therefore to the service of the public, a new building fully equipped for the teaching of law. While primarily intended for the use of residents of New Brunswick, advantage will be taken of its facilities by others from various parts of Canada and from foreign shores. Those facilities include, it is needless to emphasize, not merely the physical structure, its embellishment and the fixtures and the books but also the members of the Faculty of Law of the University.

The teaching of law had its genesis in remote antiquity but throughout the centuries has developed in different countries in numberless ways. Here, as in the other common law provinces, you operate under a system different from one which has as its foundation, a code. The two great systems of law in Canada have different origins but, as has been many times pointed out by Chief Justice Rinfret, the aim of each is to do justice between man and man and between the individual on the one hand, and the community, whether it be a municipality, a province, or Canada, on the other. To those who have been nurtured in the former, the Common Law of England, as varied by applicable statutory enactments, is the rule to which they are accustomed and it is that law which, save for an excursion into comparative law, it will be the privilege and the function of the members of the Faculty of Law of this University to instill into the minds of its students.

I assume that not everyone in this gathering is trained in the profession or expects to follow that branch of learning but every individual must be affected by the law at one time or another. One may not be concerned in a cause célèbre, but, being a gregarious animal, man is bound to feel its impact in his daily life, — or perhaps his heir or beneficiary after he has departed this planet. It is, therefore, of the greatest importance that the law should be known to those who, by virtue of the training offered them, will be expected to be able to advise competently all who may consult them.

Contrary to the opinion of Mr. Bumble, the law is not “a ass, a idiot” and however imperfect it may appear to a disappointed litigant, its object is to regulate the transactions of, and the relationships among, various members of the human race. It is now a truism in all democracies that the rule of law is necessary for the well-being of their civilizations, but it is not necessary on the present occasion to enlarge upon the reason for this. It suffices to note that its bulwark is a free

and independent judiciary which in England commenced in the reign of William the Third, with the Act of 1700, whereby it was enacted that Judges' commissions should run "*quam diu bene gesserint* (instead of *durante bene placito*) and their salaries ascertained and established, but that upon the address of both Houses of Parliament it might be lawful to remove them. So far as the Judges of the Superior Courts of the provinces in this country are concerned, a similar enactment is to be found in Section 99 of The British North America Act and as to the judges of courts set up by the Parliament of Canada, by provisions in the relevant statutes. Without presumption but with humility, one holder of judicial office, on behalf of all, ventures to affirm that the people of Canada have confidence in the ability, integrity and impartiality of the members of their judiciary.

However, the courts must rely upon the assistance and co-operation of the Bar, not merely in carrying out their obligation to apply the rule of law without fear or favour and under all circumstances, but also in ensuring the preservation of that function. The task allotted to each is not for the glory of the members of either but as a means of furthering the cause of democracy and keeping alive what Bliss Carman described as:—

"That master cry, 'If freedom die,
Ye will have lived in vain'".

Freedom of thought and of action does not come from the recitation of decided cases or the statement of principles enunciated in them, although each of these is necessary. The pupil must be taught not merely what the professor knows but he must be trained to think for himself so that he will appreciate the reason for a rule and apply it to circumstances as they arise. Then will he be able to distinguish those cases where the principle is inapplicable from those in which it will be proper to extend or amplify it. Nowhere is the general point put more clearly or expressively than by Cardinal Newman when, in his Sixth Discourse on University Teaching, he takes for granted "that the true and adequate end of intellectual training and of a University is not Learning or Acquirement, but rather is Thought or Reason exercised upon Knowledge". At the same time there must not be overlooked the practical object of sending forth into a world men and women who will be able to advise others, draw pleadings, and argue in court. Into the current discussion as to the mode of attaining this desideratum I do not enter since the body having the responsibility of instruction must, after surveying the field, come to a conclusion as to what it considers best in the interests of the public which is really the test of the best interests of the neophytes.

Thus the responsibilities resting upon any Faculty of Law are onerous. In the past they have been met fully and with accomplishment at the University of New Brunswick and it is the firm conviction of all that in the future its Faculty will follow a noble tradition.

But if the teacher be important, as he is, the student body must be prepared to take full advantage of the opportunities afforded it. George Sharswood, in his Memoir of William Blackstone, justly points out that "the profession (of the law), like all others, demands of those who would succeed in it an earnest and entire devotion". In what other manner may a pupil justify the years he spends at such an institution as this? In some cases there have been sacrifices by parents and relatives. In every instance the student owes it to himself to utilize to the utmost the possibilities before him so that in time he may come to the Delectable Mountains; and there is an obligation to his future clients that no lack of preparation on his part may embroil them in needless litigation. This is not to say that all may bear the palm, but if each carries in his mind the words of another gifted son of this province his work will not have been in vain. In truth, anyone connected with the law must continue to pursue a studious course and therefore it is not only to graduates of the Law School of the University of New Brunswick past, present and future, including today's recipients of your favour, but to each and all that these lines by Sir Charles G. D. Roberts are applicable:—

Consider not my little worth,—
The mean achievement, scamped in act,
The high resolve and low result,
The dream that durst not face the fact.

But count the reach of my desire.
Let this be something in Thy sight;—
I have not, in the slothful dark,
Forgot the Vision and the Height.